IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.C. No. 3 of 1999

DATE OF DECISION: 23.8.2007

M/s Shree Digvijaya Woolen Mills Ltd.

…Petitioner

Versus

The Commissioner of Income-tax, Amritsar.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjay Bansal, Senior Advocate, with
Mr. Parvesh Saini, Advocate, and
Mr. Parshant Bansal, Advocate,
for the assessee-petitioner.

Mr. Sanjiv Bansal, Advocate,
for the respondent-revenue.

M.M. KUMAR, J.

This petition filed under Section 256(2) of the Income-tax Act, 1961 (for brevity, 'the Act'), prays for issuance of direction to the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal') to frame statement of the case and refer certain questions of law, which are claimed to have emerged from the order of the Tribunal, dated 22.1.1998, passed in I.T.A. No. 531(ASR)/1990 and I.T.A. No. 546 (ASR)/1990, in respect of Assessment Year 1983-84 (P-13). However, at the hearing learned counsel for the petitioner has claimed that all the questions of law could be compressed in one question and the claim has been confined to that question, which reads as follows:-

> Whether on the facts and circumstances of the case, was the Tribunal wrong in law and acted perversely in sustaining the additions of Rs. 34,28,414/- on account of excessive

shortage and Rs. 2,15,150/- on account of scrap value of discarded cables which had been made by the Assessing Officer on surmises and conjectures without any evidence and material justifying such additions?

Facts in brief are that the assessee-petitioner had filed a petition under Section 256(1) of the Act before the Tribunal with the submission that questions of law arises and same be referred for opinion of this Court. However, the Tribunal vide its order dated 17.7.1998, passed in R.A. No. 64 (ASR)/1998, had declined the prayer made by the assessee-petitioner (P-15). It is appropriate to mention that the assessee-petitioner is engaged in the business of manufacture and sale of woolen worsted yarn and woolen worsted cloth, blankets, shawls etc. The assessee-petitioner submitted its return of income for the assessment year 1983-84. It filed a list of discarded machinery showing the cost of overhead and underground wires and cables and accessories which were written off after long use of 25/30 years. Similarly some dispute with regard to claim for higher wastage in the course of production of yarn in worsted wool had been claimed, which were exceeding the previous years, although in the earlier years the percentage of wastage was smaller or even higher. There were difference of opinion between the Assessing Officer and the Commissioner of Income Tax (Appeals). However, the Tribunal, accepted the view taken by the Assessing Officer.

After going through the paper book as well as the orders of the Assessing Officer, CIT (A) and the Tribunal, we have reached the conclusion that there is element of consistency in the claim regarding wastage made by the assessee-petitioner in the earlier years except the assessment years 1981-82 and 1982-83. Therefore, we are of the view that the question sought by the assessee-petitioner deserves to be determined by this Court.

In view of above, this petition is allowed. The Tribunal is directed to draw statement of the case and refer the above noted question of law along with the statement of the case to this Court.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 23, 2007

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